

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
RONALD ANDREW POCH,)	CASE NO. 08-68429 - MHM
)	
Debtor.)	
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DONALD F. WALTON,)	
UNITED STATES TRUSTEE,)	
)	
Plaintiff,)	
v.)	ADVERSARY PROCEEDING
)	NO. 10-6304
RONALD ANDREW POCH,)	
)	
Defendant.)	

ORDER DENYING DEFENDANT'S MOTION TO DISMISS

This adversary proceeding is before the court on *Debtor's Response Pleading Via Motion to Strike Plaintiff's Complaint Objecting to Debtor's Discharge or in the Alternative Debtor's Motion to Dismiss Plaintiff's Complaint for Lack of Jurisdiction* filed by Defendant *pro se* (Doc. No 4) (the "Motion"). Defendant seeks dismissal of the U.S. Trustee's complaint objecting to discharge on the grounds that this court lacks jurisdiction because the complaint was not timely filed.¹ For the reasons set forth below, Defendant's Motion is denied.

¹ Debtor includes a request to strike the complaint but Debtor does not set forth any of the grounds in F. R. Civ. P. 12(f), incorporated in Bankruptcy Rule 7012, to support a motion to strike. The gravamen of Debtor's motion is dismissal.

As background to Defendant's Motion, the record shows that Defendant's Chapter 7 bankruptcy case was filed May 5, 2008. The original bar date for filing an objection to discharge under Bankruptcy Rule 4004 was August 11, 2008. Prior to the bar date, the U.S. Trustee had obtained an order authorizing a Bankruptcy Rule 2004 examination of Debtor, but the U.S. Trustee was having difficulty obtaining the documents requested from Debtor. Therefore, on August 11, 2008, the U.S. Trustee filed a motion for extension of the deadlines for filing a motion to dismiss under 11 U.S.C §707(b) and for filing an objection to discharge under 11 U.S.C. §727(a) (Doc. No. 20) (the "First Extension Motion"). Debtor opposed the First Extension Motion. Following hearing held October 14, 2008, an order was entered January 30, 2009, granting the First Extension Motion and extending deadlines (the "Deadlines") to March 15, 2009 (Doc. No. 87). Debtor appealed that order (the "Appeal").

As set forth by Debtor, on March 4, 2009, Debtor and the attorney for the U.S. Trustee had a telephone conference in which Debtor requested an extension of the deadline for him to file his Appeal brief. The attorney for the U.S. Trustee agreed in exchange for Debtor's agreement to extend the Deadlines to 45 days following the conclusion of Debtor's Appeal. In accordance with Debtor's agreement, the U.S. Trustee filed a motion in Debtor's main bankruptcy case to extend the Deadlines to 45 days following the conclusion of Debtor's Appeal (Doc. No. 114). Debtor did not oppose that motion and an order was entered April 13, 2009, extending the Deadlines to 45 days after the conclusion of the Appeal (Doc. No. 123) (the "Second Extension Order"). Debtor did not appeal that order.

On February 24, 2010, the U.S. District Court entered an order denying Debtor's request for leave to appeal the order granting the First Extension Motion (on the bankruptcy case docket, Doc. No. 126). Debtor filed a motion for reconsideration March 11, 2010. An order was entered May 19, 2010, denying Debtor's motion for reconsideration.

On April 6, 2010, while Debtor's motion for reconsideration was pending before the U.S. District Court, to clarify the meaning of the Second Extension Order, the U.S. Trustee filed another motion to extend the Deadlines (Doc. No. 132)(the "Third Extension Motion"), which Debtor opposed. By order entered July 1, 2010, the Third Extension Motion was granted, extending the Deadlines to

45 days following dismissal of the Appeal or resolution of the Appeal in favor of UST. If the Appeal is resolved in favor of Debtor, nothing in this order shall be construed to enlarge the deadlines in Bankruptcy Rules 1017 and 4004.

(the "Last Extension Order").

The Last Extension Order addressed Debtor's arguments about the court's jurisdiction to extend time while a prior order extending time was on appeal, and concluded that the bankruptcy court had jurisdiction to grant the extension to maintain the *status quo* and protect the U.S. Trustee from having the Deadlines expire while on appeal and while Defendant was refusing to cooperate with any further discovery by the U.S. Trustee. Debtor did not appeal the Last Extension Order.


Debtor *pro se* now seeks dismissal of this adversary proceeding on the ground that this court lacks jurisdiction because the complaint was not timely filed. Debtor argues that the Second Extension Order was entered without jurisdiction because appeal of the extension issue was still pending. Debtor makes other specious arguments, such as the Second Extension Order and the Last Extension Order are invalid because the order granting the First Extension Motion was not vacated before they were entered; and because the motion for the Second Extension Order, which was filed before the Deadlines expired, was untimely under F. R. Civ. P. 59(e). These specious arguments will not be addressed in detail except to conclude that they are without merit.

The Last Extension Order addressed Debtor's arguments, in opposition to the U.S. Trustee's motion, that the bankruptcy court was without jurisdiction to extend time while the Appeal was pending. That discussion will not be repeated here except to confirm that the bankruptcy court, as a court of equity and pursuant to §105, has jurisdiction to enter orders to prevent manifest injustice. Failure to protect the U.S. Trustee's right to examine Debtor by simply letting the Deadlines run while the appeal was pending would have been manifestly unjust and does not reflect how our system of laws is intended to function. Debtor's attempt in Motion to reargue matters that have been previously decided is without merit and a waste of judicial resources. Finally, rules governing time limits for a party in interest to file objections to discharge are not jurisdictional. *Kontrick v. Ryan*, 540 U.S. 443 (U.S. 2004). Accordingly, it is hereby

ORDERED that Defendant's Motion (Doc. No. 4) is *denied*. Debtor may file an answer to the complaint within 20 days of the date of entry of this order.

The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 28th day of March, 2011.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE